IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 51 OF 2007
IN
STAMP NUMBER MAIN NO. 618 OF 2007

SHRI. CHANDRAKANT K. GAWAS ... Applicant
Versus
M/S. SHREE ATCHUTANAND BHUVAN AND 2 ORS. ... Respondents

Mr. A. D. Bhobe, Advocate for the Applicant.
Mr. V. A.Lawande, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 5th April, 2007

ORAL ORDER

Heard the learned Counsel on behalf of both the parties.

2. The Complainant is seeking special leave to appeal against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881.

3. There is no dispute that the subject cheque bearing no.286814 dated 09.06.2006 for Rs.20,000/-, was signed by the accused as Power of Attorney of his deceased father, who has expired on 22.12.2004. The Complainant presented the said cheque for payment but was returned dishonoured with endorsement that the funds were insufficient. The Complainant sent a statutory notice which the accused replied, by reply dated 04.07.2006, stating that his financial position was not sound and was seeking further time of six months.

4. The question was or is whether the accused could be convicted under Section 138 of the Act?

5. As already stated, the accused has issued the subject cheque not from an account maintained by him but from an account belonging to his deceased father and had signed the subject cheque pursuant to a Power of Attorney given by his deceased father. One of the requirements under Section 138 of the Act, is that the cheque should be issued and drawn by a person on an account maintained by him with the Banker for payment of any amount of money to another person from out of that account for the discharge in whole on part of any debt or liability... etc. Learned Counsel on behalf of the Complainant points out to the reply to the notice and submits that the accused had admitted his liability. This would not be relevant as long as the cheque was not issued by the accused from the account maintained by him. No decision supporting a contrary view has been cited at the Bar.

6. As already stated in the case at hand, the accused gave a cheque not from an account maintained by him but from an account maintained by his father, who was already dead almost two years prior to the accused signing the cheque as Power of Attorney of his deceased father. In such a situation, in my view, the accused could not have been convicted under Section 138 of the Act. The Complainant is always free to take appropriate proceedings as advisable in law.

Application dismissed.

N. A. BRITTO, J.

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